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263 NLRB No. 98

D--9158
Cerritos, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MICROBUS CORPORATION

and

Case 21--CA--21260

UNITED STEELWORKERS OF AMERICA, AFL--CIO--CLC

DECISION AND ORDER

Upon a charge filed on May 12, 1982, by United Steelworkers of America, AFL--CIO--CLC, herein called the Union, and duly served on Microbus Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on May 26, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 1, 1982, following a Board election in Case 21--RC--16680, the Union was duly certified as the exclusive collective-bargaining representative of

Respondent's employees in the unit found appropriate;[1] and that, commencing on or about May 6, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Further, commencing on or about May 6, 1982, Respondent has failed and refused to supply certain information requested by the Union concerning the conditions of employment of unit employees. On June 4, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 30, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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[1] Official notice is taken of the record in the representation proceeding, Case 21--RC--16680, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent contests, inter alia, the validity of the Union's certification. In his Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues considered in the underlying representation case. We agree.

Our review of the record in this case, including the record in Case 21--RC--16680, reveals that, after a hearing, the Regional Director issued a Decision and Direction of Election on November 17, 1981. At the hearing, the parties stipulated, inter alia, that Respondent, during the past 12-month period, purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of California. Based on this stipulation, the Regional Director found that Respondent met the jurisdictional standards of the Board. The Regional Director further found that the appropriate unit consisted of all production and maintenance employees, shipping and receiving employees, plant clerical employees, and truckdrivers; excluding office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

In accordance with the Regional Director's Decision and Direction of Election, an election was conducted on December 18, 1981, and the tally of ballots furnished the parties after the election showed 33 votes cast for, and 14 votes against, the Union. There were five challenged ballots, an insufficent number

to affect the results. Respondent filed timely objections to the election arguing that the National Labor Relations Board, through its Board agent, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing employees who had voted to remain in the polling area during the entire voting period; and by allowing employees who remained in the polling area after voting to threaten, coerce, and intimidate employees who were waiting in line to vote. Respondent also argued that the Union, through its agents and representatives, threatened, coerced, and intimidated employees; interfered with fair election processes and destroyed the necessary laboratory conditions by allowing its observer to maintain a list other than the Excelsior list during the voting period; misrepresented to employees that if anyone did not vote, it would be counted as a union vote; and misrepresented to employees that if the Union won the election, employees would be guaranteed wages in excess of $6 per hour. After an investigation, the Regional Director on February 1, 1982, issued his Supplemental Decision and Certification of Representative in which he overruled the objections in their entirety and certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Certification of Representative. The request for review was denied on March 12, 1982, by telegraphic order of the Board.

On April 22, 1982, the Union, by letter, requested, and continues to request, Respondent to provide certain information for purposes of collective bargaining including the name, seniority date, classification, and rate of pay for each production and maintenance employee; the number of paid holidays now in effect; the amount of the current social insurance program, if any, including the cost and type of benefits; the amount of vacation benefits now being given the employees, if any; shift differentials, if any; and other benefits now in effect being given to the employees by Respondent. The Union further requested Respondent to bargain collectively with it as the collective-bargaining representative of the unit employees.

In its answer to the complaint in this case, Respondent denies that the Regional Director's certification of the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit was lawful and proper. It further denies that the Union requested and that it refused to bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit. Finally, Respondent denies that the information requested by the Union is necessary or relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. With respect to Respondent's denial that it refused to bargain with the Union, attached to the General Counsel's Motion for Summary Judgment is a copy of Respondent's letter to the Union, dated May 6, 1982, rejecting the Union's request for bargaining and for information relevant to bargaining and further

stating it believes the Union's certification was improper and Respondent intends to test that certification in the court of appeals. Respondent has submitted nothing to controvert this document. Accordingly, we deem the allegations of the complaint concerning Respondent's refusal to bargain to be true. See Georgia, Florida, Alabama Transportation Company, 228 NLRB 1321 (1977). Further, in its answer to the complaint, Respondent asserted as affirmative defenses the same claims it made in its objections to the election and its request for review. As for Respondent's denial of the relevancy of the information requested by the Union, it is well settled that wage, fringe benefits, and employment data concerning bargaining unit employees are presumptively relevant for the purposes of collective bargaining, and must be provided upon request to the employees' bargaining representative.[2] In all other respects, Respondent is attempting to raise issues in the present case which were, or could have been, raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding,

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[2] See, e.g., Western Electric, Inc., 225 NLRB 1374 (1976).
[3] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## Findings of Fact

### I. The Business of Respondent

Respondent is and has been at all times material herein a California corporation which operates a facility located in Cerritos, California, where it is engaged in the business of fabricating custom design vehicles. During the 12 months preceding May 26, 1982, Respondent purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the State of California.[4]

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in

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[4] In its answer to the complaint Respondent admits that it is within the Board's jurisdiction, but denies that it purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the State of California within the 12 months preceding May 26, 1982. We note that in his Motion for Summary Judgment the General Counsel alleges that Respondent stipulated to the above facts in the underlying representation case. Respondent filed no response to this allegation and submits no information to controvert it. Accordingly, we find the General Counsel's allegation to be true.

commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. The Labor Organization Involved

United Steelworkers of America, AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### A. The Representation Proceeding

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, shipping and receiving employees, plant clerical employees, and truckdrivers; excluding office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

#### 2. The certification

On December 18, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on February 1, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about April 22, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit and to provide certain information for purposes of bargaining including the name, seniority date, classification, and rate of pay of each production and maintenance employee; the number of paid holidays now in effect; the amount of the current social insurance program, if any, including the cost and type of benefits; the amount of vacation benefits now being given to employees, if any; shift differentials, if any; and other benefits now in effect being given to the employees by the Respondent. The requested information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Commencing on or about May 6, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to provide the requested information and to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since May 6, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Microbus Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, shipping and receiving employees, plant clerical employees, and truckdrivers; excluding office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 1, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about May 6, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By failing and refusing on or about May 6, 1982, and at all times thereafter, to supply information for the purposes of collective bargaining to the above-named labor organization

regarding, inter alia, the name, seniority date, classification, and rate of pay of each production and maintenance employee; the number of paid holidays now in effect; the amount of the current social insurance program, if any, including the cost and type of benefits; the amount of vacation benefits now being given to employees, if any; shift differentials, if any; and other benefits now in effect being given to the employees by the Respondent, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Microbus Corporation, Cerritos, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL--CIO--CLC, as the

exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, shipping and receiving employees, plant clerical employees, and truckdrivers; excluding office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to supply requested information for the purposes of collective bargaining to United Steelworkers of America, AFL--CIO--CLC, regarding inter alia, the name, seniority date, classification, and rate of pay of each production and maintenance employee; the number of paid holidays now in effect; the amount of the current social insurance program, if any, including the cost and type of benefits; the amount of vacation benefits now being given to employees, if any; shift differentials, if any; and other benefits now in effect being given to the employees by the Respondent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply information to the above-named labor organization for the purposes of collective bargaining as the exclusive representative of all employees in the aforesaid appropriate unit.

(c) Post at Microbus Corporation copies of the attached notice marked ''Appendix.''[5] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 27, 1982

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John H. Fanning, Member

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Howard Jenkins, Jr., Member

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Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL--CIO--CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT fail and refuse to supply requested information for the purposes of collective bargaining, to United Steelworkers of America, AFL--CIO--CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, shipping and receiving employees, plant clerical employees, and truckdrivers; excluding office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, supply information for purposes of collective bargaining to the above-named Union, as the exclusive representative of the employees in the bargaining unit described above.

MICROBUS CORPORATION

(Employer)

Dated ---------- By ----------

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, City National Bank Building---24th Floor, 606 South Olive Street, Los Angeles, California 90014, Telephone 213--688--5229.